

## REMARKS

In the present office action, claims 31-49 and 51 are pending in the application. These same claims stand rejected.

### *In-Person Interview*

On February 28, 2008, examiner Mark Fadok and the undersigned conducted an in-person interview regarding the presently pending application. The substance of this interview is incorporated into the present remarks.

As a preliminary matter, the applicant would like to thank examiner Fadok for generously giving his time to discuss this matter at length, thereby expediting prosecution.

### *Priority*

The applicant acknowledges the priority date of October 12, 2001. The specification has been amended to reflect this change.

### *Claim Rejections – 35 U.S.C. § 101*

Claims 31, 42, and 51 stand rejected under § 101 because the claimed subject matter allegedly lacks utility (e.g., profiling in providing airport security).

Speaking at the most general level of abstraction, *any* patented system and/or method *could be* (mis)used by a given party. For example, U.S. Patent No. 7,379,885 (“System and method for obtaining, processing and evaluating patient information for diagnosing disease and selecting treatment”) could be misused by the government to deny Medicare (i.e. discrimination against sickly patients based on diagnosed disease). The examiner does not, indeed can not, assert that the claimed systems or methods have no legal uses.

Section 101 is not the appropriate forum for speculating on the purpose for which a claimed subject matter *may be* used. Unless the examiner is saying that any of the above mentioned claims fall into one of the three exceptions to patent eligibility (viz., laws of nature, physical/natural phenomena, and abstract ideas), withdrawal of the present rejection is respectfully requested. *See Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980).

***Claim Rejections – 35 U.S.C. § 112***

Claims 31, 42, and 51 also stand rejected under § 112 because they allegedly contain subject matter which was not described in the specification. For direct support, please see at least pp. 52-58 and corresponding figures 22 and 23.

The applicant, in the most humble manner, submits that government restrictions on profiling is a scenario conjured up by the examiner. The focus should be on the claims *as they are recited*. The claims *as recited* are supported by at least pp. 52-58 and corresponding figures 22 and 23.

***Claim Rejections – 35 U.S.C. § 103***

Claims 31, 42, and 51 are the independent claims. By way of example, claim 31 recites:

31. A system for expediting security checking, comprising:

an interface configured to receive orders for products, services and security clearances provided by a plurality of merchants and venues, said interface receiving an order for a security clearance from a device remote from said plurality of venues;

wherein said security clearance applies to a venue selected from said plurality of venues by an individual, and said security clearance is based on a calculation of the risk posed by said individual and a calculation of the risk posed by any groups associated with said individual;

a transaction module that routes said security clearance to a check-point, wherein calculating the risk said individual poses to said venue occurs before the entry of said individual to said venue, and wherein said security clearance allows for expedited entry to said venue; and

*wherein said security clearance is configured to match predetermined input from said individual at said check-point.*

(emphasis added). In particular, the last recitation of claim 31 recites: “wherein said security clearance is configured to match predetermined input from said individual at said check-point.” Applicant hereby respectfully submits that at least this aspect of claim 31 is not found in the cited art.

During the above mentioned in-person interview, examiner Fadok and the undersigned discussed at length the notion of e-tickets as types of security clearances. However, it is clear that e-tickets that may be purchased beforehand and presented at airports are not security clearances that are “configured to match predetermined input from ... individual[s] at ... check-point[s]” (claim 31). At most, any of the cited art discloses static pieces of information, usually in paper form, that can be presented at check points. Claim 31, in stark contrast, recites that the “security clearance is configured to match predetermined input from said individual at said check-point.” By way of example and not limitation, please see the specification at page 53, lines 14-18.

Claim 31 also recites: “a transaction module that routs said security clearance to a check-point.” E-tickets are not routed to check-points. Instead, they are (typically) presented at check-points by travelers. Applicant respectfully requests that claim 31 be read in its entirety when contemplating the last element discussed above.

The other independent claims, namely claims 42 and 51, also recite similar subject matter to that of claim 31, and are therefore allowable for similar reasons. Insofar as the dependent claims incorporate the limitations of the aforementioned independent claims, they patentably define over the cited art for similar reasons.

During the in-person interview, examiner Fadok and the undersigned spent almost two hours diligently examining the cited art: (1) U.S. Patent Publication 2003/0024988 (Standard) (describing a system for providing evidence of payment, where each transaction initiated through the system is assigned a unique code, and where the code in turn is used to generate a two-dimensional barcode which may be sent in an electronic format to the customer); (2) Airport security articles 1-11 (describing various aspects of security, including e-tickets and itineraries necessary to enter a secured area, and security passes that can expedite boarding of prescreened frequent fliers); (3) U.S. Patent Publication 2002/0099579 (Stowell) (describing stateless, event-monitoring architecture for performance-based supply chain management); and (4) Official Notice (see e.g., pp. 7-8 of the Office Action).

However, nowhere does there appear the notion recited in claim 31 and discussed above. And, moreover, even if the examiner could somehow point to all the elements of claim 31, applicant respectfully submits that the combined disclosures of these references cannot be said to create a *prima facie* case of obviousness of applicant’s claim 31. In this regard, the

examiner is reminded that, to support such a *prima facie* case of obviousness, he is required to present *reasons* why a person of ordinary skill would find it obvious to select among the disclosures of the various technologies described by the cited references, so as to arrive at applicant's claimed invention. See MPEP § 2141:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 1, 14, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "*rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*" *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at 14, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

(emphasis added). In the Office Action, the examiner sets forth a conclusory, "bare-bones" rationale for combining the references in the manner proposed to support the rejection. In connection with the rejection of claim 42 (claim 31 is rejected for the same rationale), the Office Action states:

It would have been obvious to a person having ordinary skill in the art at the time of the invention to include Standard and Stowell the issuing of security clearances before entry into the venue, because this will avoid disruption of frequent fliers (airportsecurity11) [sic] provide a screening of known terrorists that have connections with terrorist organizations (airportsecurity2) [sic] and provide a system the [sic] will separate into groups those that pose a security risk and those that do not (airportsecurity7, page 2) [sic].

(Office Action, pp. 6-7). Here, the examiner essentially takes the position that the combination of Standard, Stowell, and the Airport Security references renders claim 42 unpatentable *because this will avoid disruption, provide screening, and separate parties into groups that pose a security risk.*

But, this analysis is deficient in at least two respects: First, it fails to provide articulated reasoning as to why it would have been obvious to modify Standard (a system for providing evidence of payment) in view of Stowell (architecture for performance-based supply chain management) and/or Airport Security references (e-

tickets, security passes) – that is, to combine their disclosures to arrive at the present applicant's claimed subject matter.

Second, the examiner's explanation merely takes the present applicant's teachings and transforms them into an argument for unpatentability. In other words, the examiner is saying that it would have been obvious to combine and modify the prior art because the present applicant has taught that such a system would have advantages over the prior art. Applicant respectfully submits that this is not a proper obviousness analysis but rather relies on improper hindsight to select disparate aspects of the prior art and assemble them in the manner recited by applicant's claims.

## **CONCLUSION**

Applicant believes that the present remarks are responsive to each of the points raised by the examiner in the official action, and submits that claims 31-49 and 51 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner's earliest convenience is earnestly solicited.

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/ Grzegorz S. Plichta /  
Grzegorz S. Plichta  
Registration No. 55,541

Woodcock Washburn LLP  
Cira Centre  
2929 Arch Street, 12th Floor  
Philadelphia, PA 19104-2891  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439